IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.54 OF 1992

1.Bhagwan Ganpat Patil

2.Dharma Ganpat Patil
2(1) Pandurang Dharma Patil
2(2) Mahadev Dharma Patil
2(3) Smt.Chandrabhaga Namdev Mumbaikar
2(4) Sahadeo Dharma Patil
2(5) Krishna Dharma Patil
2(6) Atmaram Dharma Patil
2(7) Vasudev Dharma Patil
2(8) Smt.Jayshri Suresh Rane
2(9) Prakash Dharma Patil
2(10)Ramesh Dharma Patil
2(11)Suresh Dharma Patil
2(12)Vilas Dharma Patil
2(13)Smt.Taibai Dharma Patil

3.Anant Ganpat Patil
4.Yadneshwar Ganpat Patil
5.Vasant Ganpat Patil ...Appellants

vs.

The State of Maharashtra ...Respondent

WITH
FIRST APPEAL NO.595 OF 1991

The State of Maharashtra ...Appellant

vs.

1.Bhagwan Ganpat Patil
2.Dharma Ganpat Patil
2(1) Pandurang Dharma Patil
2(2) Mahadev Dharma Patil
2(3) Smt.Chandrabhaga Namdev Mumbaikar
2(4) Sahadeo Dharma Patil
2(5) Krishna Dharma Patil
2(6) Atmaram Dharma Patil
2(7) Vasudev Dharma Patil
2(8) Smt.Jayshri Suresh Rane
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2(10)Ramesh Dharma Patil
2(11)Suresh Dharma Patil
2(12)Vilas Dharma Patil

2(13)Smt.Taibai Dharma Patil

3.Anant Ganpat Patil
4.Yadneshwar Ganpat Patil
5.Vasant Ganpat Patil ...Respondents.

Mr.N.V.Walawalkar for the Appellants in F.A.NO.54/1992 and for the Respondents in F.A.No.595/1991
Ms Geeta Mulekar, A.G.P. for State in the both the Appeals.

CORAM: A.S.OKA,J.
DATE : FEBRUARY 27,2007.

ORAL JUDGMENT:

1. These two Appeals can be conveniently disposed of by a common Judgment as by both the said appeals the challenge is to the Judgment and Award dated 31st March 1990 passed by the learned Civil Judge (Senior Division), Raigad-Alibag in a land acquisition Reference no.252 of 1989. The Appeals relate to the lands at village Navade, Taluka Panvel, District Raigad. The area of the land is 18,000 sq. meters which bears survey No.261/0. The said land was notified for acquisition under the Land Acquisition Act,1894 (hereinafter referred to as the said Act of 1894) and the purpose of acquisition is development of satellite city of Navi Mumbai. The Award under section 11 of the said Act of 1894 was made on 28th August 1986. The claimants did not accept the Award and applied for reference under section 18 of the said Act of 1894. By the impugned Judgment and Award, the market value has been fixed at Rs.10/- per sq. meter and the claimants were granted statutory benefits. The claim made by the Claimants in the

reference under section 18 of the said Act of 1894 was for market value at the rate of Rs.25/- per sq. meter. The Reference Court came to the conclusion that the market value of the acquired land was Rs.10/- per sq. meter on the relevant date.

2. First Appeal No.54 of 1992 has been preferred by the original claimants for enhancement in market value and the First Appeal No.595 of 1991 is filed by the State of Maharashtra claiming for reduction in the market value.

3. Shri Walawalkar, learned Senior Counsel for the claimants has placed reliance on the decision of a Division Bench dated 16th September 2004 in the case of State of Maharashtra Vs. Chandrakant Bhiva Patil (First Appeal No.423 of 1996 and other connected Appeals.). He also placed reliance on the decision of the learned Single Judge of this Court in case of State of Maharashtra Vs. Atmaram Narayan Shetye (First Appeal No.68 of 1992 and other connected Appeals). He also relied upon the decision of the Division Bench delivered on 30th August 2004 in case of the State of Maharashtra Vs. Prabhakar Bhagwan Patil and others in First Appeal No.602 of 1991. He submitted that for similarly situated acquired lands from the same village which were notified for the same public purpose by a notification dated 3rd February 1970, this court has fixed the market value at the rate of Rs.25/- per sq. meter and

therefore, the Appeal for enhancement of market value deserves to be allowed in its entirety. The learned A.G.P. submitted that the lands which are subject matter of the three decisions relied upon by the learned Counsel for the claimants were better located than the acquired land which is subject matter of the present Appeals. He submitted that considering the large area of the acquired land, necessary deduction will have to be made on account of development charges.

4. I have considered the submissions. In case of State of Maharashtra Vs. Chandrakant Bhiva Patil (supra) the Division Bench was dealing with a land from village Navade which was notified for acquisition on 3rd February 1970 for the same public purpose. The Division bench relied upon the earlier decision of the Division Bench in First Appeal No.757 of 2003. Relying upon the said decision, the Division Bench had fixed the market value of the acquired land at the rate of Rs.25/- per sq.meter. The lands subject matter of the said Appeal was at the distance of 200 meters from the Bombay Pune national highway.

5. In case of State of Maharashtra Vs. Atmaram Narayan Shetye (supra) before the learned Single Judge of this Court, the land acquired was from village Navade which was notified on the same date. The said land was abutting Bombay Pune national highway and therefore, the learned Single Judge fixed

the market value at the rate of Rs.30/- per sq. meter for the said land.

6. In case of State of Maharashtra Vs. Prabhakar Bhagwan Patil and others (supra), the Division Bench was dealing with the acquisition of land at village Navade which was notified on 3rd February 1970. The said land was at the distance of 500 meters from Bombay Pune National Highway. The Division Bench fixed the market value at the rate of Rs.25/- per sq. meter.

7. It is not in dispute that the vast tracts of lands from village Navade were notified for acquisition on 3rd February 1970 for the purpose of development of satellite city of Navi Mumbai. Most of the said lands were agricultural and undeveloped lands as on 3rd February 1970. The aforesaid decisions which are relied upon by the learned Senior Counsel for the claimants are certainly relevant for deciding the market value of the land which is subject matter of present Appeals.

8. In the present case, claimants examined one Shri Jivan Kulkarni as an expert valuer. In his deposition, he proved the valuation report submitted by him which is at Exh.14. He also proved in his evidence the plan drawn by him which is at Exh.13. In the said report at Exh.14, it is disclosed that

the distance of the acquired land from Bombay Pune national highway is 750 meters. Shri Dharma Ganpat Patil was examined on behalf of the claimants deposed that Bombay Pune National Highway is at the distance of 40 to 50 feet from the land under reference. The said claimant is not an expert in so far as measuring the distance of the acquired land from national highway is concerned and therefore, so far as the distance is concerned, the court will have to rely upon the report of the valuer examined by the claimants which discloses that the Bombay Pune National Highway is at the distance of 750 meters. If the aforesaid decisions of this Court which are referred to above are considered, I find that the learned Single Judge of this court has fixed the market value at the rate of Rs.30/- per sq. meter in respect of the lands which were abutting the Bombay Pune National Highway. In case of lands which were at the distance of 200 and 500 meters respectively, the market value at the rate of Rs.25/- has been awarded. The said decisions certainly afford the basis on which the market value of the acquired land can be fixed. The Apex Court in case of Krishna Yachendra Bahadurvaru vs. Special Land Acquisition Officer, City Improvement Trust Board, Bangalore and others (A.I.R. 1979 S.C. page 869) has held that under section 23 of the said Act of 1894 the estimation of market value in many cases must depend largely on evaluation of many imponderables and hence it must necessarily be to some extent a matter of conjecture or guess.

9. In the present case, as held earlier, the distance of the acquired land from Bombay Pune National Highway is 750 meters. Therefore, the market value of the acquired land will be slightly less than Rs.25/- per sq. meter. The submission of the learned A.G.P. is that deduction should be made on account of development charges. In three decisions of this Court which are brought to my notice, no specific deduction has been made on account of development charges. In the present case, I am not awarding the market value at the rate of Rs.25/- per sq. meter. In case of State of Maharashtra Vs. Chandrakant Patil (supra), no deduction has been made by the Division Bench. Before the learned Single Judge, in case of State of Maharashtra Vs. Atmaram Shetye (supra), there is a contention raised by the learned A.G.P. on this aspect. Other Division Bench in case of State of Maharashtra Vs. Prabhakar Patil (supra) has not made any deduction on account of development charges where the acquired land was situated within 500 meters from Bombay Pune National Highway. It cannot be said that while fixing the market value, the Division Benches were not aware of the requirement of making a deduction on account of development charges and it is obvious that the market value which is fixed by the said Division Benches is after considering the deduction on account of development charges.

10. In the facts and circumstances of the present cases, taking overall view of the matter, the market value is fixed at Rs.24/- per sq. meter. Hence, the Appeal preferred by the claimants must succeed in part and the Appeal preferred by the State of Maharashtra will have to be dismissed.

11. Hence, I pass the following order :

i) First Appeal No.595 of 1991 is dismissed. The Appellant State of Maharashtra will pay costs of the Appeal to the Respondents.

ii) First Appeal No.54 of 1992 is partly allowed. Impugned Judgment and Award is modified. The claimants will be entitled to market value at the rate of Rs.24/- per sq. meter. In addition to market value, the claimants will be entitled to statutory benefits under sections 23 (1-A), 23(2) and section 28 of the Land Acquisition Act,1894.

iii) The Claimants will be entitled to proportionate costs of the Reference as well as of First Appeal No.54 of 1992.

iv) The Reference Court will make calculation of the amount of compensation payable to the claimants within a period of four months from the date on which writ of this

Judgment is received by the Reference Court.

v) Writ to be sent immediately.

JUDGE